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13 OCULUS VR, INC., and PALMER LUCKEY

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION (SANTA ANA)

17 JULIANA GRIFFO,

18 Plaintiff,

19 v.

20 OCULUS VR, INC., and PALMER
21 LUCKEY,

22 Defendants.

Case No. 8:15-cv-01228 DOC (JCGx)

REQUEST FOR JUDICIAL NOTICE

1 Defendants Oculus VR, Inc. and Palmer Luckey hereby request that the
2 Court take judicial notice of the fact that the Facebook messages contained in
3 Exhibit 1 to the Declaration of Palmer Luckey (attached hereto as Exhibit A) were
4 sent and received on the dates stamped on the messages.

5 In evaluating a motion to dismiss, a court may take judicial notice of a fact
6 that is “not subject to reasonable dispute” in that it is “capable of accurate and
7 ready determination by resort to sources whose accuracy cannot reasonably be
8 questioned.” *Jimenez v. Domino's Pizza, Inc.*, 238 F.R.D. 241, 246 (C.D. Cal.
9 2006) (citing Fed. R. Civ. 201(b)). The fact that the messages in Exhibit 1 were
10 sent and received at the times stamped on the messages is not subject to reasonable
11 dispute. Moreover, the fact that the messages were sent and received at the times
12 indicated is capable of accurate and ready determination by resort to sources whose
13 accuracy cannot reasonably be questioned, such as Luckey’s Facebook Messenger
14 inbox. *See Peace & Freedom Party v. Bowen*, 912 F. Supp. 2d 905, 907 (E.D. Cal.
15 2012) (taking judicial notice of admission in letter sent to defendant on plaintiffs’
16 behalf), *aff’d sub nom. Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014); *Datel*
17 *Holdings, Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974, 983–84 (N.D. Cal. 2010)
18 (taking judicial notice of “a screen shot from a game showing the requirement that
19 a user update the game” because the fact of the update was capable of accurate and
20 ready determination by placing the video game disc in an Xbox).

21 Additionally, under the “incorporation by reference” doctrine, a court can
22 take judicial notice of a document attached to a motion to dismiss where the
23 plaintiff’s claim depends on the contents of the document and the plaintiff does not
24 dispute the document’s authenticity. *See Knievel v. ESPN, Inc.*, 393 F.3d 1068,
25 1076 (9th Cir. 2005). This is so “even though the plaintiff does not explicitly
26 allege the contents of that document in the complaint.” *Id.* Here, Griffio’s
27 fraudulent concealment claim is based on alleged concealments and/or
28 misstatements that Griffio alleges Luckey made to her during the “negotiation

1 process” that allegedly took place in the few days preceding the launch of the
2 Kickstarter campaign on August 1, 2012. *See* Fourth Am. Compl. ¶ 10. That
3 alleged “negotiation process” necessarily includes these messages, sent on July 28
4 and July 30, 2012; and Griffo cannot avoid dismissal by selectively relying on
5 some of her communications with Luckey but not others.

6 For the foregoing reasons, Defendants respectfully request that the Court
7 take judicial notice that the messages contained in Exhibit 1 to the Declaration of
8 Palmer Luckey were sent and received on the dates indicated.

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10 Dated: November 28, 2016

KEKER & VAN NEST LLP

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12 By: /s/ Michael Kwun
Michael Kwun

13 Attorneys for Defendants
14 OCULUS VR, INC., and PALMER
15 LUCKEY
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